ATTACHMENT A

October 18, 2009

Policy Framework for PACE Financing Programs

The following Policy Framework has been developed by the White House and the relevant agencies as a policy framework for Property Assessed Clean Energy (PACE) financing programs. Today, the Vice President is announcing support for the use of federal funds for pilot programs of PACE financing to overcome barriers for families who wish to invest in energy efficiency and renewable energy improvements.

The innovative PACE approach attaches the obligation to repay the cost of improvements to the property, not the individual borrower, creating a way to pay for the improvements if the property is sold. This Policy Framework provides important safeguards for the relevant parties, including homeowners and mortgage lenders. The Policy Framework applies to federal funding of PACE programs and also is designed to serve as a resource for state, local, and tribal governments who seek to carry out PACE activities without federal funding.

The Department of Energy (DOE) is announcing funding for model PACE projects, which will incorporate this Policy Framework's principles for PACE program design. Under the State Energy Program, DOE has received approximately $80 million of applications for PACE-type programs to provide upfront capital. Additional PACE programs are encouraged through a Funding Opportunity Announcement, released today, for competitive grants under the Energy Efficiency Conservation Block Grant Program. These pilot programs will be accompanied by a significant research effort, so that the federal government can assess the efficacy of PACE as a funding source for energy retrofits and evaluate the effectiveness of the homeowner and lender protections set forth in this Policy Framework.

The Promise of PACE Financing

By making energy efficiency investments easier, less expensive, and more effective, PACE can help to increase the amount invested in energy efficiency. Specifically, PACE programs streamline financing of energy efficiency investments in three key ways. First, property assessments provide a secure, well-established payback mechanism that will lead to lower borrowing costs. The security of the payback mechanism often makes it possible for PACE financing to be offered with no money down requirement. Second, the economies of scale from making PACE financing available to a large group of borrowers can reduce overhead and transaction costs. Finally, effective administration of PACE programs at the local-government level will create more consumer confidence in the economic value of energy efficiency investments.

PACE Financing Initiatives: Overview

Land-secured financing districts (also known as special tax or special assessment districts) are a familiar tool in municipal finance. In a typical assessment district a local government issues bonds to fund projects with a public purpose such as streetlights, sewer systems or underground utility lines. Property owners that benefit from the improvement then repay the bond through property assessments, secured by a property lien and paid as a part of the property taxes.

If appropriately designed and implemented, extension of this finance model to energy improvements may allow property owners to pay for efficient enhancements with expected monthly payments that are less than expected utility bill savings.

How it works

This local-government energy financing structure would allow property owners to "opt-in" to attach up to 100% of the cost of energy improvements to their property tax bill. In the event of nonpayment of the assessment, the local government has the ability to foreclose on the delinquent property in the same manner as for nonpayment of taxes, or it may choose to wait for another party to initiate foreclosure. Importantly, as a protection for mortgage lenders on the property, liability for the assessment in foreclosures should be limited to any amount in arrears at that time, and the full costs of the improvement are not accelerated or due in full. The assessment runs with the property at law and successor owners are responsible for remaining balances.

Tying payment to the property solves credit and collateral issues for energy efficiency and renewable energy loans, reduces up-front costs to a minimum payment or zero, and allows for both the payment and the value of the retrofit to be transferred from one owner to the next. Local governments should establish a reserve fund to backstop late assessment payments, helping assure that investors in energy efficiency and renewable energy loans are paid on time. The use of reserve funds also reduces risk to the first mortgage lender and other private lien-holders, because initial losses to those who fund energy efficient and renewable energy loans are paid out of the reserve fund. Municipalities could also share this risk with contractors through a variety of conditional contract mechanisms.

In certain settings, an alternative financing approach would be for homeowners to pay for energy improvement retrofits through their utility bills. There is value going forward in evaluating these different mechanisms and discovering where each may be most effective. Results may vary geographically or with the market role of local utilities.

Existing PACE Programs

PACE programs that are planned or underway include: Albuquerque, NM; Athens, OH; Austin, TX; Babylon, NY; Berkeley, CA (which pioneered the concept); Boulder, CO; Palm Desert, CA; San Diego, CA; San Francisco, CA; and Santa Fe, NM; and at the state level in California, Connecticut, Maryland, Oregon, Texas, Vermont, Virginia, and Wisconsin. If only 15 percent of residential property owners nationwide took advantage of clean energy community financing, the resulting emissions reductions would contribute 4 percent of the savings needed for the U.S. to reach 1990 emissions levels by 2020. Over time, with appropriate policy development that addresses the interests of the various stakeholders, including the definition of allowable energy efficiency and renewable energy investments, it may also be possible to extend the model to multifamily housing and commercial buildings.

Implementation: The Federal Role

As states and local governments have implemented PACE programs, they have begun to develop practices for homeowner and lender protection. Federal funding using ARRA resources provides an opportunity to encourage innovation and improvement in the PACE financing model. A federal role to encourage PACE pilot programs will facilitate the collection of data, objectively measure and evaluate the performance of PACE programs, and speed the adoption of more uniform and universal best practices that include robust and effective homeowner and lender protections.

Clear home improvement standards, accompanying federal and other public funds, will address the risk of substandard home improvements and improve overall contractor quality. For both homeowners and lenders, the programs should be structured to address risks that could arise given that property tax assessments under PACE usually take priority over private liens in the event of foreclosure. Where appropriate, conditions will be placed on DOE's ARRA funding to address these homeowner and lender concerns.

Research on Pilot Programs

PACE collaborations offer a unique opportunity for the federal government to coordinate and aggregate much-needed, program-specific data such as energy consumption and savings obtainable, investment cash flows achievable, effects on property valuation, risks associated with community-financed retrofit programs, and the effects of new homeowner and mortgage lender protections. Where possible, research can also assess benefits from PACE programs such as reductions to greenhouse gases and economic impacts on community spending and job creation. Utility bills from before and after a retrofit are crucial for measuring energy savings, and support from utilities will be important in providing this information, subject to appropriate privacy safeguards.

As an integral part of Federal support for pilot PACE programs, the Department of Energy will support substantial research about key aspects of PACE programs, including: the energy and financial returns of energy efficiency and renewable energy retrofits; the effectiveness of homeowner protections; and the effectiveness of safeguards for mortgage and energy lenders.

Funding

Under the State Energy Program, DOE has received approximately $80 million of applications that could potentially use a PACE financing structure, out of $3.2 billion in total funding. The Department of Energy is also issuing a Funding Opportunity Announcement of $454 million under its Competitive Energy Efficiency and Conservation Block Grant program. This "Retrofit Ramp-Up" program will pioneer innovative models, including PACE loans, for rolling out energy efficiency to hundreds of thousands of homes and businesses in a variety of communities. In the Funding Opportunity Announcement, DOE encourages applications for PACE programs, which would be implemented consistent with this Policy Framework and contribute to research efforts about the effectiveness of such programs.

Challenges

As discussed above, federal agencies can play an important role in developing and publicizing measures that address important homeowner and lender protection issues. The Office of Management and Budget will work with the National Economic Council and key federal agencies on additional guidance (not formal rulemaking) for federal grant programs that fund PACE programs. Because PACE programs are still quite new, such as the new federally-funded pilots, best practices may evolve rapidly, and so some aspects of today's Policy Framework may not apply in all situations.

<u>Homeowner Protection</u>

Effective consumer protection is a crucial first line of defense against defaults that would harm both homeowners and lenders. PACE programs should help assure that energy retrofits are designed to pay for themselves within a reasonable period, and that homeowners are protected against fraud or substandard work.

1. *Savings to Investment Ratio.* As has long been the case for DOE's single-family weatherization program, the "savings to investment ratio" for PACE program assessments should be greater than one. This "pay for itself" principle means that the expected average monthly utility savings to homeowners should be greater than the expected monthly increase in tax assessments due to the PACE energy efficiency or renewable energy

improvements. Improvements should be made where there is a positive net present value, so that expected total utility bill savings are estimated to be greater than expected total costs (principal plus interest). In some instances, tax credits or other subsidies are available to support investments. If so, then the present value of the expected savings to consumers should be greater than the present value of the increase in assessments once those subsidies are included.

2. *Financing Should be for High-Value Investments.* Financing should be limited to investments that have a high return in terms of energy efficiency gains. In some cases, investments can be limited to a set of projects that have well-documented efficiency gains for most houses in a climate zone, such as sealing ducts or installing insulation. In other cases, investments will be based on the results of an authorized energy audit that identifies the energy efficiency gains for a particular house for a particular retrofit. Ensuring that loans are made for these high-value investments will protect homebuyers and mortgage lenders, and maximize the impact of PACE on improving energy efficiency.

3. *Assuring that the Retrofit is Constructed as Intended.* First, the scope of the retrofit should be determined by a list of presumptively-efficient projects or based on an energy audit, conducted by a qualified auditor or inspector. Second, validly licensed contractors or installers should do the actual home improvements. Third, there should be an after-the-fact quality assurance program. Qualified raters should do reviews upon completion, for the portion of houses needed to assure program quality, to assure that correct work was performed and is up to standards. If the property owner or local government administering the contract is not satisfied with a retrofit or if the follow-up rating shows that the work was not completed in a commercially reasonable manner, the contractor should be required to fix the work. If that does not solve the problem, then just as with any construction project, payment to the contractor can be withheld until such a time as the work is done satisfactorily or the homeowner can seek other redress. In circumstances where a project is not completed to standards, the contractor should be disqualified from further work under the PACE program – a strong incentive to complete work correctly.

This approach provides important incentives and safeguards for all of the relevant parties. For homeowners, the "pay for itself" principle assures that the expected savings exceed the investment, and the protections afforded for proper projects and work address concerns about inappropriate or substandard work. For mortgage and other lenders, these safeguards reduce the risk that overly-expensive, substandard, or uneconomic projects will be undertaken, protecting the value of the house that serves as collateral for the loan.

Furthermore, PACE programs must comply with applicable federal and state consumer laws and include adequate disclosures to and training for homeowners participating in the program. For instance, local governments implementing PACE programs must disclose the risks to participating property owners, including risks related to the default and foreclosure that could result from failure to pay assessments. Along with training and certification standards to be established by DOE and the Department of Housing and Urban Development (HUD), effective anti-fraud measures should be implemented. To avoid "copy cat" programs that offer PACE-like programs without these protections, local, state and federal consumer protection enforcement agencies should target mortgage fraud scams and "copy cat" programs.

Lender and Borrower Protection

If poorly designed, PACE programs could increase risk to mortgage lenders, which in turn could lead to higher interest rates for homeowners. Because local property taxes usually take priority over private liens, including mortgages, mortgage lenders face an increased risk of non-payment if a PACE borrower becomes delinquent on payment.

Because of the importance of the housing finance market, and the need to understand and address any risks posed to homeowners and mortgage lenders, the federal government is supporting PACE loans at this time at the pilot and demonstration level. Federal agencies including DOE, HUD, and Treasury have worked together to understand how best to encourage energy efficiency and renewable energy loans while also creating effective rules and practices to prevent losses in the mortgage market. Over time, a variety of approaches might best address the need to ensure a well-functioning mortgage market by protecting the rights of pre-existing lien holders, perhaps including a national-level guarantee fund alongside or in place of local government-level reserve funds. Experience with pilot PACE programs can inform policy in the longer-term.

As noted earlier, effective consumer protection is a crucial first line of defense against default. The "pay for itself" test also helps lenders, because the long-term value of the house may well be improved by energy efficiency investments that make living in the house more affordable. Additional protections come from the year-by-year nature of the property tax lien if a borrower defaults. For instance, if a homeowner defaults on an eight-year assessment after two years, in most programs only any unpaid property taxes would be collected to cure the default, not the remaining six year balance. This benefit of PACE financing, which should be standard in all PACE programs, is that the entire amount financed will not be accelerated, understanding, however, that the additional tax burden may impact the property value upon default. Another important protection is that the scope of home efficiency enhancements paid through property taxes is limited – property taxes would not be expanded to uses other than energy improvements to the home that have a savings-to-investment ratio of greater than one.

Beginning immediately, this Policy Framework supports additional measures to further limit risk to mortgage lenders:

1. *Assessment Reserve Fund.* A reserve fund should be established at the local-government level, to protect the energy investor against late payment or non-payment of the assessment. This reserve fund means that the value of mortgage lenders' collateral should not be reduced by any failure by the homeowner to pay the PACE assessment.

2. *Length of Time.* The length of time for a homeowner to repay the PACE assessments should not exceed the life expectancy of the energy efficient improvements.

3. *Size of Financing Relative to the House Value.* As a general matter, PACE assessments should not exceed a certain percentage of appraised value of the home, generally 10%.

4. *Clear title.* Applicants must prove they are the legal owners of a property, unanimous approval of property-holders is required, and the title should be clear of easements or subordination agreements that conflict with the assessment.

5. *PACE Financing only where no current default.* Participation in the program should not be allowed unless: (i) property taxes are current; (ii) no outstanding and unsatisfied tax liens are on the property; (iii) there are no notices of default or other evidence of property-based debt delinquency for the lesser of the past three years or the property owner's period of ownership; and (iv) the property is current on all mortgage debt.

6. *No Negative Equity Financing.* PACE loans to borrowers who are "underwater" – whose mortgage and other debt on the property is greater than the current value of the house – raise particular risks because such loans are especially likely to default with less than full payment to private lienholders PACE programs should require a current estimate of appraised value, and outstanding property-based debt cannot be less than the value of the property.

7. *Vulnerable Areas.* Local governments should be cautious in using the PACE model in areas experiencing large home price declines, where large numbers of "underwater" loans may exist. PACE programs in such areas should proceed only after careful attention to local real estate conditions and programmatic safeguards to avoid contributing to additional borrower defaults.

8. *Escrow.* To reduce the risk of non-payment of property assessments, homeowners should escrow payments for PACE programs in the common situations where they already escrow other property tax assessments.

Conclusion

As the innovative PACE programs proceed, state and local governments should work closely with federal agencies to collect and aggregate performance data on the efficacy of consumer and lender safeguards, as well as energy efficiency and renewable energy results, to ensure constant improvement and wide scale program success.

In sum, PACE programs have the potential to increase the accessibility and affordability of energy saving measures, consequently lowering energy bills to residents and reducing the environmental footprints of participating localities. If programs are not properly constructed, however, the programs could potentially create risk for homeowners and lenders. Adoption of best practices, including strong contracting standards in the selection of those doing the retrofits, will help deliver the type of market transformation we need to see retrofitting scale up and achieve our goals. Existing programs have taken steps to design property and project criteria for eligibility, as well as quality assurance measures, that mitigate risk without unnecessarily limiting accessibility. Going forward, reporting to the Department of Energy about the performance of these programs will be important as feedback to improve these innovative programs over time. PACE programs should be conformed and tied to well understood, national scale procedures that will improve the quality and quantity of retrofits, and reduce costs.

ATTACHMENT B

Department of Energy
Washington, DC 20585

Guidelines for Pilot PACE Financing Programs

May 7, 2010

This document provides best practice guidelines to help implement the Policy Framework for PACE Financing Programs announced on October 18, 2009.[1] Property Assessed Clean Energy (PACE) financing programs allow state and local governments, where permitted by state law, to extend the use of land-secured financing districts to fund energy efficiency and renewable energy improvements on private property.[2] PACE programs attach the obligation to repay the cost of improvements to the property, not to the individual borrower. After consultation within the federal government and with other stakeholders, the Department of Energy has prepared the following Best Practices to help ensure prudent financing practices during the current pilot PACE programs.

These best practice guidelines are significantly more rigorous than the underwriting standards currently applied to land-secured financing districts. Especially in light of the exceptionally challenging economic environment and recovering housing market, the following best practice guidelines for pilot PACE financing programs are important to provide an extra layer of protection to both participants who voluntarily opt into PACE programs, and to lenders who hold mortgages on properties with PACE tax liens. These best practice guidelines may evolve over time as we learn more about the performance of PACE programs and are able to identify new best practices.[3] All pilot PACE financing programs are strongly encouraged to follow these best practice guidelines. This document is divided into two sections: Program Design Best Practice Guidelines and Assessment Underwriting Best Practice Guidelines.

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[1] The Policy Framework for PACE Financing Programs is available here: http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf.

[2] For more information on PACE programs, please visit: http://www1.eere.energy.gov/wip/solutioncenter/financialproducts/PACE.html. PACE programs are paid through a tax lien on the property. Lien priority is a matter of state law, and these best practices do not (and cannot) pre-empt state law.

[3] These best practice guidelines are primarily for the residential market. Different standards may be appropriate in non-residential markets.

<u>Program Design Best Practice Guidelines:</u>

Local governments should consider the following program design features to increase the reliability of energy and economic performance for the benefit of program participants, mortgage holders, and investors.

1. Expected Savings-to-Investment Ratio (SIR) Greater Than One[4]

The primary rationale for PACE programs is to pursue a legally-defined "public purpose", which generally includes environmental, health, and energy independence benefits.[5] Although traditional land-secured assessment districts do not require projects to "pay for themselves", PACE financing should generally be limited to cost effective measures to protect both participants and mortgage holders until PACE program impacts become more widely understood.

The financed package of energy improvements should be designed to pay for itself over the life of the assessment. This program attribute improves the participant's debt-to-income ratio, increasing the participant's ability to repay PACE assessments and other debt, such as mortgage payments. Local governments should consider three program design features to ensure that the expected SIR is greater than one:[6]

- An energy audit and modeling of expected savings to identify energy efficiency and renewable energy property improvement measures that are likely to deliver energy and dollar savings in excess of financed costs over the assessment term. Local governments should limit investment to those identified measures.

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[4] SIR = [Estimated savings over the life of the assessment, discounted back to present value using an appropriate discount rate] divided by [Amount financed through PACE assessment]
Savings are defined as the positive impacts of the energy improvements on participant cash flow. Savings can include reduced utility bills as well as any payments for renewable energy credits or other quantifiable environmental and health benefits that can be monetized. Savings should be calculated on an annual basis with an escalator for energy prices based either on the Energy Information Agency (EIA) U.S. forecast or a substantiated local energy price escalator.

[5] Specific public purposes are defined by the state's enabling legislation, which may vary somewhat between states. Existing legislation is available here:
http://www.dsireusa.org/incentives/index.cfm?EE=1&RE=1&SPV=0&ST=0&searchtype=PTFAuth&sh=1

[6] These program options are not mutually exclusive and programs should consider deploying them in concert. In addition, these measures could be coordinated with the proposed HOMESTAR's Silver and Gold guidelines. More Information on HOMESTAR is available here:
http://www.whitehouse.gov/the-press-office/fact-sheet-homestar-energy-efficiency-retrofit-program

- In lieu of audits, programs may choose to limit eligibility to those measures with well-documented energy and dollar savings for a given climate zone. There are a number of energy efficiency and renewable energy investments that are most likely to yield a SIR of greater than one for most properties in a region.
- Encourage energy efficiency before renewable energy improvements. The economics of renewable energy investments can be enhanced when packaged with energy efficiency measures. The SIR should be calculated for the entire package of investments, not individual measures.

2. The Term of the Assessment Should Not Exceed the Useful Life of the Improvements

This best practice guidelines document is intended to ensure that a property owner's ability to repay is enhanced throughout the life of the PACE assessment by the energy savings derived from the improvements. It is important to note that the useful life of the measure often exceeds the assessment term.

3. Mortgage Holder of Record Should Receive Notice When PACE Liens Are Placed

Mortgage holders should receive notice when residential property owners fund improvements using a PACE assessment.[7]

4. PACE Lien Non-Acceleration Upon Property Owner Default

In states where non-acceleration of the lien is standard for other special assessments, it should also be standard for PACE assessments. After a foreclosure, the successor owners are responsible for future assessment payments. Non-acceleration is an important mortgage holder protection because liability for the assessment in foreclosure is limited to any amount in arrears at the time; the total outstanding assessed amount is not due in full.

5. The Assessment Should Be Appropriately Sized

PACE assessments should generally not exceed 10% of a property's estimated value (i.e. a property value-to-lien ratio of 10:1). In addition, because of the administrative requirements of administering PACE programs, assessments should generally not be issued for projects below a minimum cost threshold of approximately $2500. These measures ensure that improvements are "right-sized" for properties and for the administrative costs of piloting PACE programs. PACE programs may also choose to set the maximum assessment relative to median home values.

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[7] A different standard may apply to non-residential properties.

6. Quality Assurance and Anti-Fraud Measures

Quality assurance and anti-fraud measures are essential protections for property owners, mortgage holders, investors, and local governments. These measures should include:

- Only validly licensed auditors and contractors that adhere to PACE program terms and conditions should be permitted to conduct PACE energy audits and retrofits. Where feasible or necessary, auditors and contractors should have additional certifications appropriate to the installed measures.
- Inspections should be completed on at least a portion of participating properties upon project completion to ensure that contractors participating in the PACE program are adequately performing work.
- If work is not satisfactorily completed, contractor payment should be withheld until remedied. If not satisfactorily remedied, programs should disqualify contractors from further PACE-related work.
- Property owners should sign-off before payment is issued for the work.

7. Rebates and Tax Credits

The total amount of PACE financing should be net of any expected direct cash rebates for the energy efficiency or renewable energy improvements chosen. However, other non-direct cash incentives can be more difficult to manage. For example, calculating an expected income tax credit can be complicated, as not all participants will have access to the tax credit and there will be time lags between project completion and tax credit monetization. Programs should therefore consider alternative structures for financing this gap, including assignment of rebates and tax credits to repay PACE assessments, short-term assessment additions, and partnering with third party lenders that offer short-term bridge financing. At the minimum, programs should provide full disclosure to participants on the implications and options available for monetizing an income tax credit.

8. Participant Education

PACE may be an unfamiliar financing mechanism to program participants. As such, it is essential that programs educate potential participants on how the PACE model works, whether it is a property owner's most appropriate financing mechanism, and the opportunities and risks PACE program participation creates for property owners. Programs should clearly explain and provide disclosures of the following:

- How PACE financing works

- Basic information on other financing options available to property owners for financing energy efficiency and renewable energy investments, and how PACE compares
- All program fees and how participants will pay for them
- Effective interest rate including all program fees, consistent with the Good Faith Estimate (GFE) of the Real Estate Settlement Procedure Act (RESPA) and the early and final disclosure of the Truth in Lending Act (TILA).
- PACE assessment impact on escrow payments (if applicable)
- Risk that assessment default may trigger foreclosure and property loss
- Information on transferring the assessment at time of sale
- Options for and implications of including tax credits in the financed amount

9. Debt Service Reserve Fund

For those PACE programs that seek third party investors, including investors in a municipal bond to fund the program, an assessment reserve fund should be created to protect investors from late payment or non-payment of PACE assessments.

10. Data Collection

Pilot programs should collect the data necessary to evaluate the efficacy of PACE programs. Examples of typically collected data would include: installed measures, investment amount, default and foreclosure data, expected savings, and actual energy use before and after measures installation. To the extent possible, it's important that programs have access to participant utility bills, ideally for 18 months before and after the improvements are made. The Department of Energy will provide more detailed information on collecting this data, obtaining permission to access utility bills, and how to report program information to enable a national PACE performance evaluation.

<u>Assessment Underwriting Best Practices Guidelines:</u>

Local governments should design underwriting criteria to reduce the risk of default and impairment to the property's mortgage holders. Many best practices for reducing these risks are included in the previous section. In addition, underwriting criteria for individual assessments should include the following:

1. Property Ownership

- Check that applicant has clear title to property and that the property is located in the financing district.

- Check the property title for restrictions such as details about power of attorney, easements, or subordination agreements.

2. Property-Based Debt and Property Valuation

- Estimated property value should be in excess of property owner's public and private debt on the property, including mortgages, home equity lines of credit (HELOCs), and the addition of the PACE assessment, to ensure that property owners have sufficient equity to support the PACE assessment. Local governments should be cautious about piloting the PACE model in areas with large numbers of "underwater" mortgages.
- To avoid placing an additional tax lien on properties that are in distress, have recently been in distress, or are at risk for distress, the following should be verified:
  - There are no outstanding taxes or involuntary liens on the property in excess of $1000 (i.e. liens placed on property for failure of the owner to comply with a payment obligation).

    Property is not in foreclosure and there have been no recent mortgage or other property-related debt defaults.
- Programs should attain estimated property value by reviewing assessed value. This is typically used in assessment districts. If assessed value appears low or high, programs should review comparable market data to determine the most appropriate valuation. If programs believe the estimated value remains inaccurate or there is a lack sufficient comparable market data to conduct an analysis, they should conduct a desktop appraisal.[8]

3. Property Owner Ability to Pay

PACE programs attach the obligation to repay the cost of improvements to the property (not to the individual borrower). The standard underwriting for other special assessments only consists of examining assessed value to public debt, the total tax rate, and the property tax delinquency rate. However, we deem certain precautions important due to the current vulnerability of mortgage lenders and of the housing market in many regions. These precautions include:

- A Savings-to-Investment Ratio (SIR) greater than one, as described above, to maintain or improve the property owner's debt-to-income ratio.
- Property owner is current on property taxes and has not been late more than once in the past 3 years, or since the purchase of the house if less than three years.[9]

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[8] A desktop appraisal involves a licensed appraiser estimating the value of a property without a visual inspection. These appraisals cost approximately $100.

[9] Applicants that have purchased the property within 3 years have recently undergone rigorous credit analyses that compensate for the short property tax payment history.

- Property owner has not filed for or declared bankruptcy for 7 years.

These best practice guidelines will evolve over time with continued monitoring of the performance of pilot PACE financing programs.

ATTACHMENT C

Freddie Mac
We make home possible

Industry Letter

TO: Freddie Mac Seller/Servicers May 5, 2010

SUBJECT: First Lien Mortgages and Energy Efficient Loans

Several states have recently enacted laws that authorize localities to create new energy efficient loan programs that generally rely on the placement of a first priority lien to secure energy efficient home improvements. Programs under these laws are sometimes referred to as Energy Loan Tax Assessment Programs or Property Assessed Clean Energy programs. Freddie Mac has begun to receive questions about these new energy loan programs.

The purpose of this Industry Letter is to remind Seller/Servicers that an energy-related lien may not be senior to any Mortgage delivered to Freddie Mac. Seller/Servicers should determine whether a state or locality in which they originate mortgages has an energy loan program, and whether a first priority lien is permitted. Freddie Mac will provide additional guidance in the event that these energy loan programs move beyond the experimental stage.

Freddie Mac supports the goal of encouraging responsible financing of energy efficient and renewable energy home improvements. We continue to work with federal and state agencies and with Seller/Servicers on initiatives for developing workable energy retrofit programs.

CONCLUSION

Please contact your Freddie Mac representative or call (800) FREDDIE if you have any questions. Seller/Servicers may also wish to contact their federal regulators, who share concerns about energy liens.

Sincerely,

Patricia J. McClung

Patricia J. McClung
Vice President
Offerings Management

ATTACHMENT D

Lender Letter LL-2010-06 **May 5, 2010**

TO: All Fannie Mae Single-Family Sellers and Servicers

Property Assessed Clean Energy Loans

Fannie Mae has received a number of questions from seller-servicers regarding government-sponsored energy loans, sometimes referred to as Property Assessed Clean Energy (PACE) loans. PACE loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage. As PACE programs progress through the experimental phase and beyond, Fannie Mae will issue additional guidance to lenders as may be needed from time to time.

Fannie Mae supports energy-efficiency initiatives, and is willing to engage with federal and state agencies as they consider sustainable programs to facilitate lending for energy-efficiency home retrofits, while preserving the status of mortgage loans originated as first liens.

Questions should be directed to Resource_Center@fanniemae.com with the subject line "PACE." Lenders may also wish to consult with their federal regulators, who share concerns about PACE programs.

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Marianne E. Sullivan
Senior Vice President
Single-Family Chief Risk Officer

ATTACHMENT E

FEDERAL HOUSING FINANCE AGENCY

STATEMENT

For Immediate Release
July 6, 2010

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

FHFA Statement on Certain Energy Retrofit Loan Programs

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.

2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:

   - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;

   - Ensuring that loan covenants require approval/consent for any PACE loan;

   - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;

   - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

   Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

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The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than $5.9 trillion in funding for the U.S. mortgage markets and financial institutions.

ATTACHMENT F

OCC 2010-25

OCC BULLETIN

Comptroller of the Currency
Administrator of National Banks

Subject: **Property Assessed Clean Energy (PACE) Programs** Description: **Supervisory Guidance**

Date: July 6, 2010

TO: Chief Executive Officers of All National Banks, Department and Division Heads, and All Examining Personnel

The Office of the Comptroller of the Currency (OCC) is issuing this guidance to alert national banks to concerns and regulatory expectations regarding certain state and local lending programs for energy retrofitting of residential and commercial properties, frequently termed a Property Assessed Clean Energy (PACE) program. PACE or PACE-like (PACE) programs use the municipal tax assessment process to ensure repayment. Under most of these programs, such loans acquire priority lien, thereby moving the funds advanced for energy improvements ahead of existing first and subordinate mortgage liens.[1] This lien infringement raises significant safety and soundness concerns that mortgage lenders and investors must consider. Reflecting these concerns, the Federal Housing Finance Agency (FHFA) today issued the attached statement directing actions that Fannie Mae, Freddie Mac, and the Federal Home Loan Banks should undertake to protect their operations with regards to such programs.

National banks need to be aware of the FHFA's directives for loans that they may originate with the intent to sell to the government sponsored entities. More generally, national banks should ascertain if such programs exist in jurisdictions where they do business, determine whether those programs alter banks' lien positions, and carefully consider the programs' impact on both banks' current mortgage portfolios and ongoing mortgage lending activities.

National bank lenders should take steps to mitigate exposures and protect collateral positions. For existing mortgage and home equity loans, actions may include the following in accordance with applicable law:

- Procuring loss guarantees from the respective states or municipalities;
- Escrowing tax assessment-related debt service payments;
- Re-evaluating and adjusting home equity line of credit (HELOC) line amounts; and
- In the case of commercial properties, securing additional collateral.

For new mortgage and home equity loans, mitigating steps may include:

- Reducing real estate loan-to-value limits to reflect maximum advance rates of PACE programs to the extent they create super-senior lien priorities; and
- Considering the maximum amount of the PACE payment portion of the annual tax assessment in the institution's analysis of the borrower's financial capacity.

In addition, banks that invest in mortgage backed securities or that are considering the purchase of pools of mortgage loans should consider the impact of tax-assessed energy advances on their asset valuations. Finally, the OCC expects investment banking units to be cognizant of the impact of this type of funding vehicle on their respective institutions and on the mortgage market overall when making any decisions regarding associated bond underwriting.

The OCC supports commercial and residential energy lending when such lending programs observe existing lien preference, ensure prudent underwriting, and comply with appropriate consumer protections. Programs that fail to comply with these expectations pose significant regulatory and safety and soundness concerns.

For questions or further information, please contact Joseph A.Smith, Group Leader, Retail Credit Division at (202) 874-5170.

/signed/
Timothy W. Long
Senior Deputy Comptroller for Bank Supervision Policy
and Chief National Bank Examiner

Attachment: FHFA Statement
[http://www.fhfa.gov/webfiles/15884/PACESTMT7610.pdf]

[1] Some states have chosen not to adopt such priority positions for their loans.

For instructions on how to view attachments, visit the Accessibility page.

ATTACHMENT G

Program Guidance

Status Update – Pilot PACE Financing Programs

July 2010

The DOE and Obama Administration is making a broad portfolio of investments in energy efficiency to create jobs and help homeowners save money. There are many innovative financing approaches that are already being deployed or under development by grantees, stakeholders, and the Administration that deliver significant energy savings for homeowners without exposing lenders to undue risk. We look forward to working with Recovery Act grantees to develop promising retrofit financing programs that will help consumers across the country, while generating valuable data on the effectiveness of these programs that will help inform future decisions.

Commercial Property Assessed Clean Energy (PACE) Primer
DOE published this primer in presentation format in July 2010 listing the advantages and disadvantages of and allowable uses of funds from the 2009 Recovery Act for commercial PACE programs.

What is the status of the Department's Pilot PACE Financing Programs?

Over the past several months, financial regulators including FHFA, FDIC and the OCC have expressed concerns about pilot PACE financing programs. On May 5th, 2010, Fannie Mae and Freddie Mac sent a letter stating that their Uniform Securities Instruments prohibit loans that have a senior lien priority to a mortgage.

May 5th Fannie Mae Lender Letter
May 5th Freddie Mac Lender Letter

In response to these concerns, DOE and Administration officials have met repeatedly with Fannie Mae, Freddie Mac, and the financial regulators as well as PACE stakeholders across the country. In addition, the DOE issued updated guidance for pilot PACE financing programs on May 7th, 2010.

May 7th DOE Guidelines for Pilot PACE Financing Programs

In the course of these meetings, the DOE and Administration has offered commitments to work on new more stringent underwriting criteria, improved consumer protections, and additional measures to significantly reduce the risk and financial exposure to mortgage holders. Despite these efforts, the FHFA issued a statement codifying their concerns on July 6th, 2010. In addition, the banking regulators have made clear that they will oppose any program in which PACE assessments are in the senior lien position (OCC issued a bulletin on July 6th, 2010). This is true even of the limited scope of pilot programs that the DOE had planned to fund.

July 6th FHFA Statement on PACE
July 6th OCC Bulletin on PACE

What is the status of property owners that have already received PACE financing with a senior lien priority given the Fannie Mae and Freddie Mac lender letters and statements from financial regulators?

The DOE and Administration has strongly supported clear reassurances that property owners with existing PACE assessments will not be harmed. The FHFA statement is a major step forward on that issue.

July 6th FHFA Statement on PACE

What is the status of Recovery Act grantees intending to use funds to support PACE financing programs with a senior lien priority given the Fannie Mae and Freddie Mac lender letters and statements from financial regulators?

The DOE and Administration continue to support pilot PACE financing programs. Recovery Act grantees are not expressly prohibited from using funds to support viable PACE financing programs, however the practical reality is that residential PACE financing programs with a senior lien priority face substantial implementation challenges in the current regulatory environment. In light of the clear opposition from the regulators for PACE financing programs with a senior lien priority, prudent management of the Recovery Act compels DOE and Recovery Act grantees to consider alternatives to programs in which the PACE assessment is given a senior lien priority.

One such option is PACE assessments that are subordinate to first mortgages. This is a structure that is being piloted in Maine and may offer some promise in other states as well. Along with offering other financing approaches, DOE will work with grantees and other PACE stakeholders to explore whether such an approach is feasible and appropriate in their communities. DOE will work with grantees to establish appropriate criteria and standards for such approaches to PACE financing.

In addition, DOE continues to support Recovery Act grantees to identify promising approaches to retrofit financing, including, but not limited to, the following:

- **Loan Loss Reserve Supported Unsecured Revolving Loan Funds**
- **Qualified Energy Conservation Bonds** *Link Available Soon*
  (DOE Guidance on Usage of ARRA Funds to Support QECB Issuance is Forthcoming)
- **On-Bill Utility Financing Programs**
- **Commercial PACE Financing Programs** (subject to financial regulatory intervention)

DOE will be actively engaging all Recovery Act grantees impacted by the recent developments with pilot PACE financing programs to determine the most effective way to leverage existing or planned program infrastructure to incorporate additional financing tools. However, Recovery Act grantees should feel free to request Technical Assistance through their DOE Project Officer or the following link to the DOE Technical Assistance Center.

DOE will provide further updates and clarification as deemed necessary to assist Recovery Act grantees in implementing effective energy retrofit financing programs.

In the interim, Recovery Act grantees will find helpful resources and background information on additional financing products at the DOE Financial Products Solutions Center.

Printable Version

Content Last Updated: 07/16/2010

ATTACHMENT H

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, *ex rel.* EDMUND G. BROWN JR., ATTORNEY GENERAL, Plaintiff, v. FEDERAL HOUSING FINANCE AGENCY; EDWARD DeMARCO, in his capacity as Acting Director of FEDERAL HOUSING FINANCE AGENCY; FEDERAL HOME LOAN MORTGAGE CORPORATION; CHARLES E. HALDEMAN, JR. in his capacity as Chief Executive Officer of FEDERAL HOME LOAN MORTGAGE CORPORATION; FEDERAL NATIONAL MORTGAGE ASSOCIATION; MICHAEL J. WILLIAMS, in his capacity as Chief Executive Officer of FEDERAL NATIONAL MORTGAGE ASSOCIATION, Defendants.	Case No. C10-03084 BZ **COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF (UNFAIR BUSINESS PRACTICES; VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT)** **(42 U.S.C. §§ 4321 *et seq.*; 28 U.S.C. 2201; Cal. Code Civ. Proc. § 1060; Cal. Bus. & Prof. Code § 17200 *et seq.*)** ADR

INTRODUCTION

1. California has pioneered financing for solar power systems, and energy and water efficiency retrofits for homeowners. These programs, called Property Assessed Clean Energy

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

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INTRODUCTION

1. California has pioneered financing for solar power systems, and energy and water efficiency retrofits for homeowners. These programs, called Property Assessed Clean Energy

("PACE") programs, reduce energy and water use, provide clean power, and are part of California's efforts to promote clean energy and green jobs. PACE programs do not operate using loans in a traditional sense. Instead, under PACE, local governments finance the upfront installation costs, and homeowners repay those costs over a period of years through assessments on the property tax bill. The California Legislature has declared that "[e]nergy conservation efforts, including the promotion of energy efficiency improvements to residential, commercial, industrial, or other real property are necessary to address the issue of global climate change"; "[t]he upfront cost of making residential, commercial, industrial, or other real property more energy efficient prevents many property owners from making those improvements"; and that, therefore, PACE serves "a public purpose[.]"[1]

2. Now, by misrepresenting the nature of the PACE programs and municipal financing, in violation of California law, Defendants Federal National Mortgage Association (commonly known as "Fannie Mae") and the Federal Home Loan Mortgage Corporation (called "Freddie Mac"), are severely hampering California's efforts to assist thousands of California homeowners to reduce their energy and water use, help drive the state's green economy, and create significant numbers of skilled, stable and well paying jobs. The actions of these government-sponsored, shareholder-owned private corporations have placed California's PACE programs – and the hundreds of millions of dollars in federal stimulus money supporting them – at immediate risk while benefitting their own pecuniary interests.

3. On May 5, 2010, Fannie Mae and Freddie Mac each issued advice letters to all lending institutions stating that mortgages for residences that also have PACE "loans" with first lien priority (providing PACE funders with priority in recovering unpaid assessments in case of foreclosure) are not allowed under these entities' standardized mortgage documents. Fannie Mae and Freddie Mac together own or guarantee about half of all residential home mortgages in the United States. Fannie Mae and Freddie Mac purchase home loans from banks and other lenders, in theory freeing up more capital for additional home mortgage lending. Because Fannie Mae

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[1] Cal. Streets & Hwy. Code § 5898.14.

and Freddie Mac control the mortgage resale market, lenders will not issue mortgages that do not meet Fannie Mae's and Freddie Mac's requirements. As a result, Fannie Mae's and Freddie Mac's determination – which misrepresents California law – essentially forecloses residential PACE programs.

4. On July 6, 2010, the Federal Housing Finance Agency ("FHFA") affirmed these entities' loan purchase restrictions for residences with PACE funding. Fannie Mae, Freddie Mac, and FHFA mischaracterize PACE funding as "loans," rather than "assessments" as they are unequivocally defined under California law. The FHFA acknowledged that, by affirming Fannie Mae's and Freddie Mac's position, the agency was effectively stopping PACE programs in California – in its words, effecting a "pause" in PACE – with no clear indication of when, if ever, such programs would be allowed to move forward in the future. At this critical juncture, this "pause" will cause permanent, irreparable damage to PACE, threatening tens of millions of dollars of federal stimulus monies currently allocated for California PACE programs. FHFA has effectively precluded PACE programs in California and deprived California and its citizens of the associated residential energy and water efficiency and renewable energy benefits, thereby significantly impacting the human environment, without completing the required environmental review under the National Environmental Policy Act ("NEPA").

5. Accordingly, California seeks a prompt judicial declaration as against Fannie Mae and Freddie Mac that, under California law: (a) PACE programs operate by assessments, not loans, and such assessments are valid; (b) liens that may result from PACE assessments, like those resulting from other types of assessments, have priority over mortgages; and (c) participation in PACE programs is compatible with, and not in violation of, Fannie Mae's and Freddie Mac's standardized mortgage documents. California also seeks a declaration that FHFA is required to conduct the required environmental review under NEPA before taking any action that will limit or foreclose PACE in California.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States), 5 U.S.C. §§ 701-706 (Administrative Procedure Act), 12 U.S.C.

1452(f) (original jurisdiction in federal district court for actions involving Freddie Mac), and 28 U.S.C. § 1367 (supplemental jurisdiction).

7. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a). This Court may grant declaratory relief, injunctive relief, and any additional relief pursuant to 28 U.S.C. §§ 2201, 2202 and 5 U.S.C. §§ 705, 706 and under any relevant state laws pursuant to its supplemental jurisdiction.

8. The FHFA has made a final administrative determination that is subject to review under the APA. 5 U.S.C. § 702.

9. Venue lies in this judicial district by virtue of 28 U.S.C. § 1391(e) and Civil Local Rule 3-2(d), because a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

10. Defendant Fannie Mae is a federally chartered, private corporation, of a type commonly referred to as a government-sponsored enterprise ("GSE"). Fannie Mae facilitates the secondary market in residential mortgages. Together with Freddie Mac, another GSE, Fannie Mae owns or guarantees about half the home loans in the U.S. and California. Fannie Mae is publicly traded, has a Board of Directors, and is required to report to the Securities and Exchange Commission. By statute, Fannie Mae has the power to sue and be sued in both state and federal court. 12 U.S.C. § 1723a(a).

11. Defendant Michael J. Williams is the Chief Executive Officer of Fannie Mae and is sued in that capacity.

12. Defendant Freddie Mac is a federally chartered, private corporation and also a GSE. Freddie Mac facilitates the secondary market in residential mortgages. Together with Fannie Mae, another GSE, Freddie Mac owns or guarantees about half the home loans in the U.S. and California. Freddie Mac is publicly traded, has a Board of Directors, and is required to report to the Securities and Exchange Commission. By statute, Freddie Mac has the power to sue and be sued. 12 U.S.C., § 1452(c).

13. Defendant Charles E. Haldeman, Jr. is the Chief Executive Officer of Freddie Mac and is sued in that capacity.

14. Defendant FHFA is a federal government agency created on July 30, 2008, to oversee Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. As of June 2008, the combined debt and obligations of these entities totaled $6.6 trillion, exceeding the total publicly held debt of the United States by $1.3 trillion.

15. Defendant Edward DeMarco is the Acting Director of the Federal Housing Finance Agency and is sued in that capacity.

16. California brings this action by and through Attorney General Edmund G. Brown Jr. Attorney General Brown is the chief law enforcement officer of the state. This complaint is brought pursuant to the Attorney General's independent constitutional, common law, and statutory authority to represent the public interest. Cal. Gov. Code §§ 12600–12612; Cal. Const., art. V, § 13.

MISCHARACTERIZATION OF CALIFORNIA LAW

17. The actual controversy at issue in this complaint arises out of Fannie Mae's and Freddie Mac's participation in, and influence over, the residential mortgage market in California and, more specifically, actions taken by Fannie Mae and Freddie Mac on May 5, 2010 and by FHFA on July 6, 2010.

18. For well over 100 years, local governments in California have used their assessment powers to finance improvements that serve a public purpose, such as the paving of roads, sidewalk improvements, and the undergrounding of utilities. Under California law, it is well established that in some instances, privately-owned improvements, *e.g.*, seismic and fire-related improvements, can also serve a valid public purpose.

19. Under longstanding California law, assessments create liens that have priority over mortgages.

20. By their practices and documents, Fannie Mae and Freddie Mac have for decades accepted and agreed that in California, assessments constitute priority liens.

21. Under California law, local governments in California may finance the installation on private property of roof-top solar, other distributed generation renewables, and energy and water efficiency improvements using the same assessment mechanism. Charter cities are authorized to establish PACE programs under the Communities Facilities District Act (commonly known as Mello-Roos Act), which has been in existence since 1982.[2] With the passage of California Assembly Bill 811 (AB 811) in 2008,[3] all other local governments in California are similarly authorized. Under the plain language of California law, any liens that result from PACE assessments have priority over mortgages, operating in the same way as other assessments.

22. PACE programs have been multiplying rapidly since the passage of AB 811. One very successful example is Sonoma County's Energy Independence Program. Since March of 2009, Sonoma County's program has financed nearly 1,000 projects – including, solar panels, tankless water heaters, reflective roofing, smart irrigation controllers, and attic insulation – totaling over $30 million.

23. The White House highlighted PACE in its "Recovery Through Retrofit" initiative in October 2009. In the accompanying report,[4] the White House noted the benefits of PACE: "Property tax or municipal energy financing allows the costs of retrofits to be added to a homeowner's property tax bill, with monthly payments generally lower than utility bill savings. This arrangement attaches the costs of the energy retrofit to the property, not the individual, eliminating uncertainty about recovering the cost of the improvements if the property is sold." The White House further stated that "Federal Departments and Agencies will work in partnership with state and local governments to establish standardized underwriting criteria and safeguards to protect consumers and minimize financial risks to the homeowners and mortgage lenders." On October 18, 2009, the White House released its "Policy Framework for PACE Financing

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[2] Cal. Gov. Code § 53311 *et seq*.

[3] Cal. Streets & Hwy. Code §§ 5898.12, 5898.14, 5898.20, 5898.21, 5898.22, and 5898.30.

[4] Available at http://www.whitehouse.gov/assets/documents/Recovery_Through_Retrofit_Final_Report.pdf.

Programs,"[5] in which Vice President Joseph Biden announced support "for the use of federal funds for pilot programs of PACE financing to overcome barriers for families who wish to invest in energy efficiency and renewable energy improvements."

24. The Department of Housing and Urban Development ("HUD") and Department of Energy ("DOE") expressly identified PACE as eligible for receipt of hundreds of millions of dollars in federal stimulus funds. Through the American Recovery and Reinvestment Act's Energy Efficiency and Conservation Block Grant Program, DOE awarded over $300 million directly to larger California local governments, and an additional $35 million for disbursement through the California Energy Commission ("CEC") to smaller local governments. The Recovery Act also funded the State Energy Program, under which California received more than $226 million. Both DOE and the CEC expressly supported the use of these funds for PACE programs, and, accordingly, dozens of counties and cities across California were poised to launch their own PACE programs in part with federal dollars.

25. On May 5, 2010, Fannie Mae and Freddie Mac each unexpectedly issued a "Lender Letter" directed to the home mortgage industry. Fannie Mae's Lender Letter (Exhibit A to this Complaint) provides in relevant part:

> Fannie Mae has received a number of questions from seller-servicers regarding government-sponsored energy loans, sometimes referred to as Property Assessed Clean Energy (PACE) *loans*. PACE *loans* generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit *loans* that have senior lien status to a mortgage. As PACE programs progress through the experimental phase and beyond, Fannie Mae will issue additional guidance to lenders as may be needed from time to time.

(Emphasis added.)

26. Freddie Mac's May 5, 2010 Lender Letter (also attached as Exhibit A) provides in relevant part:

> The purpose of the Industry Letter is to remind Seller/Servicers that an energy-related lien may not be senior to a Mortgage delivered to Freddie Mac. Sellers/Servicers should determine whether a state or locality in which they originate mortgages has an energy loan program and whether a first priority lien is permitted.

[5] Available at http://www.whitehouse.gov/assets/documents/PACE_Principles.pdf.

27. On May 7, 2010, DOE, after consultation within the federal government and with other stakeholders, issued its "Guidelines for Pilot PACE Financing Programs"[6] to "help ensure prudent financing practices during the current pilot PACE programs."

28. On July 6, 2010, FHFA issued a definitive Statement on PACE, together with a cover letter addressed to the California Attorney General. FHFA's Statement provides that the May 5, 2010 Fannie Mae and Freddie Mac "lender letters remain in effect." Further, both the cover letter and the Statement expressly acknowledge that by affirming Fannie Mae's and Freddie Mac's May 5, 2010 Lender Letters, the FHFA is effecting a "pause" in California PACE programs. While the Statement holds open the possibility that at some time in the future, the FHFA may allow PACE programs to resume, there is no schedule for the agency to revisit its determination and no guarantee that it will authorize PACE to proceed. In addition, as discussed in the immediately following paragraphs, any pause in PACE at this critical juncture likely is the death knell of widespread, effective PACE programs in California. The FHFA's Statement and cover letter to the California Attorney General are attached to this Complaint as Exhibit B.

29. The May 5, 2010, Lender Letters and the FHFA's Statement misrepresent the law governing PACE programs in California. California state law is clear: PACE financing is not accomplished through loans, but through assessments.

30. Under California law, liens resulting from PACE assessments, like other assessments, have priority over mortgages. Defendants seek to change that priority for their own benefit in violation of California law.

31. Fannie Mae's and Freddie Mac's longstanding business practices in California, reflecting their interpretation of their Uniform Security Instruments (including the California Deed of Trust), recognize that assessments can attain priority over mortgages, and that a mortgage holder subject to assessments that can attain priority is not inherently in violation of the California Deed of Trust. The Lender Letters and the FHFA Statement intentionally mischaracterize California law relating to PACE in order to support their unfounded contention

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[6] Available at http://www1.eere.energy.gov/wip/pdfs/arra_guidelines_for_pilot_pace_programs.pdf.

that participating in PACE is contrary to the Fannie Mae's and Freddie Mac's Uniform Security Instruments.

UNFAIR AND UNLAWFUL ACTS OR PRACTICES

32. The May 5, 2010 Lender Letters and the July 6, 2010 FHFA Statement have seriously disrupted existing and incipient PACE programs in California, as shown by the following examples. Sonoma County's Energy Independence Program, discussed above, is California's largest operating local PACE program. Defendants' actions have adversely affected the program. Among other things, since Fannie Mae and Freddie Mac issued their Lender Letters in May, several property owners participating in Sonoma County's PACE program have been unable to refinance or transfer their property without paying off the amount financed in full, notwithstanding that the property owners were current in their payment of PACE assessments. Before Fannie Mae's and Freddie Mac's Lender Letters, 22 participants in Sonoma County's PACE program were able to refinance without difficulty. Defendants' actions create substantial uncertainty for Sonoma County PACE participants going forward. San Francisco's PACE program launched in April of this year, and San Francisco scrupulously followed the DOE guidelines for PACE programs. San Francisco has now been forced to suspend operations indefinitely. In May of this year, Placer County was ready to begin its PACE program. Because of the Lender Letters, it has now suspended the residential portion of the program indefinitely. Placer County's Treasurer estimates that as a direct result of Defendants' action, $4.74 million in energy efficiency retrofitting and solar jobs related to Placer County's program alone will be cancelled. The CaliforniaFIRST program is a joint PACE program that includes over 140 cities and counties in California. The program was scheduled to launch in August of this year, but is now on indefinite hold. Every prospective PACE participant who now cannot participate in the program is being denied economic benefits, including, but not limited to, lower energy and water bills and the opportunity to obtain favorable financing under PACE.

33. Defendants' actions are, in addition, endangering the majority of the $110 million in American Recovery and Reinvestment Act of 2009 State Energy Program funds awarded by the CEC to local governments. After the FHFA's July 6, 2010 Statement, the CEC asked for

clarification from DOE on distribution of federal stimulus funds for PACE programs in California. DOE responded that, while it and the Administration continue to support PACE, in light of Defendants' actions, "prudent management of the Recovery Act compels DOE and Recovery Act grantees to consider alternatives to programs in which the PACE assessment is given a senior lien priority." CEC now must consider whether to reallocate federal stimulus funds to avoid the loss of tens of millions of dollars currently allocated for use in California PACE programs. In addition, the CEC reports that Defendants' actions threaten California's ability to obtain an infusion of funding from the Home Star Energy Retrofit Act of 2010 (H.R. 5019). Defendants' actions also are interfering with the CEC's ability to complete its duties under California Assembly Bill 758, a state law that requires the CEC to develop a comprehensive energy efficiency program for all existing residential and commercial buildings.

34. Fannie Mae's and Freddie Mac's actions are unfair as defined in California Business and Professions Code § 17200, in that they have issued Lender Letters knowing that the effect will be effectively to stop PACE in California, depriving California homeowners of the ability to participate in the program and the State of California of the larger benefits of PACE. Fannie Mae's and Freddie Mac's action are unlawful as defined in California Business and Professions Code § 17200, in that they constitute intentional interference with the prospective economic advantage, including the advantage that otherwise would flow to homeowners, in the form of lower energy and water bills and favorable financing, and to the State of California in the form of federal monies.

FAILURE TO CARRY OUT ENVIRONMENTAL REVIEW

35. After Fannie Mae and Freddie Mac issued the May 5, 2010, Lender Letters, the California Attorney General's Office sought clarification from FHFA through letters dated May 17, 2010, May 19, 2010, and May 22, 2010. The Attorney General's letters are attached to this Complaint as Exhibit C.

36. On July 6, 2010, the FHFA responded with its final, definitive Statement that ends the effective operation of PACE in California. The Statement, discussed above, is attached to this Complaint as Exhibit B.

37. Under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, a major federal action that may significantly impact the human environment cannot be approved without an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS").

38. NEPA is the "basic national charter for protection of the environment." 40 C.F.R. §1500.1. NEPA's purpose is to ensure "public officials make decisions that are based on understanding of environmental consequences, and to take actions that protect, restore, and enhance the environment" and to "ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b)-(c). NEPA is designed to "encourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. § 1500.2(d). "Human environment" is defined "comprehensively to include the natural and physical environment and the relationship of people with that environment." 40 C.F.R. § 1508.14.

39. To achieve these purposes, NEPA requires all federal agencies to prepare a "detailed statement," the EIS, regarding all "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(c).

40. Where an agency does not know whether the effects of its proposed action will be "significant," it may prepare an EA. 40 C.F.R. § 1501.4(b). An EA consists of an analysis of the need for the proposed action, of alternatives to the proposed action, and of the environmental impacts of both the proposed action and the alternatives. 40 C.F.R. § 1508.9. If the EA indicates that the federal action may significantly affect the quality of the human environment, the agency must prepare an EIS. 40 C.F.R. § 1501.4(c).

41. Under Ninth Circuit precedent, an agency must prepare an EIS if substantial questions are raised as to whether a project may have significant effects.

42. If an agency decides not to prepare an EIS, it must prepare a Finding of No Significant Impact explaining the reasons for the agency's decision. 40 C.F.R. § 1508.13.

43. Here, the FHFA's Statement puts an end to the effective operation of PACE in California, wiping out in a single action a state-law sanctioned program designed to assist homeowners and improve and protect the environment. FHFA has taken this action without

considering even a single, less drastic alternative or conducting the required environmental review.

FIRST CAUSE OF ACTION

(For Declaratory Relief; Against All Defendants)

44. California realleges and incorporates by reference the allegations of the preceding paragraphs.

45. Under 28 U.S.C. § 2201 and Cal. Code of Civ. Proc. § 1060, California seeks a declaration of legal rights and duties with respect to Defendants' characterization of PACE programs established under California law as "loans" as opposed to "assessments." More specifically, California seeks a declaration that:

a. PACE programs operate through assessments, not loans;

b. Assessments receive lien priority under California law;

c. Lien priority for assessments does not violate and does not run contrary to Fannie Mae's or Freddie Mac's Uniform Security Instruments;

d. The GSE's May 5, 2010 Lender Letters, and FHFA's July 6, 2010 Statement mischaracterize California law and the operation of the GSE's own Uniform Security Instruments.

46. Without a prompt judicial declaration, PACE programs in California will be substantially reduced or eliminated, to the detriment of current and prospective PACE participants and the many green industries that serve PACE, and the operation of an important state law designed to serve California's energy conservation, water conservation, and greenhouse gas reduction objectives will be thwarted.

SECOND CAUSE OF ACTION

(For Unfair Business Practices, Cal. Bus. & Prof. Code § 17200; Against Fannie Mae and Freddie Mac)

47. California realleges and incorporates by reference the allegations of the preceding paragraphs.

48. From May 5, 2010 and continuing to the present, Fannie Mae and Freddie Mac, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in acts or practices that constitute unfair competition as defined in California Business and Professions Code section 17200. In each instance, Fannie Mae's and Freddie Mac's acts or practices have interfered and are interfering with homeowners' ability to participate in PACE and to achieve the economic benefits of the program, and, by effectively stopping PACE, are depriving California and its residents of the economic and environmental benefits of this state law-based program. Fannie Mae's and Freddie Mac's act or practices, which were intended to, and/or had the effect of creating lien priority and a more favorable financial position for Fannie Mae and Freddie Mac, include, but are not limited to, the following:

a. characterization of PACE assessments as loans without support for such characterization under California law; and

b. claims that PACE assessments providing first lien priority are contrary to Fannie Mae's and Freddie Mac's Uniform Security Instruments.

THIRD CAUSE OF ACTION

(For Violation of National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* and the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*; Against FHFA)

49. California realleges and incorporates by reference the allegations of the preceding paragraphs.

50. NEPA, 42 U.S.C. § 4332(2)(c), and its implementing regulations require all federal agencies to prepare environmental impact analysis (an EA or an EIS) for any major action that may significantly affect the quality of the human environment.

51. The FHFA is a federal agency. Its July 6, 2010 Statement on PACE, which for all intents and purposes, forecloses residential PACE programs in California and across the nation, is a major federal action within the meaning of NEPA.

52. The FHFA's Statement may significantly affect the human environment within the meaning of 42 U.S.C. § 4332(2)(c). The Statement ends in a single action a state-law sanctioned program designed to assist homeowners and improve and protect the environment.

53. By failing to evaluate the effects of its action on the human environment through an EA or an EIS, the FHFA has taken final agency action in violation of NEPA.

54. The Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, entitles a party to seek judicial review of an agency action where a legal wrong is alleged and the party alleging the violation is adversely affected or aggrieved by the agency action. Pursuant to 5 U.S.C. § 706, a reviewing court shall hold unlawful and set aside agency action found to be arbitrary, capricious, or otherwise not in accordance with the law, and compel agency action illegally withheld or unreasonably delayed.

55. FHFA's failure to comply with NEPA and its supporting regulations constitutes arbitrary and capricious agency action, is an abuse of discretion, and is contrary to law and to procedures required by law. 5 U.S.C. § 706(2)(A), (D).

PRAYER

For the foregoing reasons, California prays for judgment as follows:

1. That the Court declare that under California law, PACE financing is accomplished through assessments and not "loans," and nothing in Fannie Mae's or Freddie Mac's Uniform Security Instruments, as reflected in Fannie Mae's and Freddie Mac's longstanding business practices, prohibits participation in PACE programs;

2. That the Court issue a temporary restraining order, preliminary injunction, and permanent injunction restraining and enjoining Fannie Mae or Freddie Mac from taking any adverse action against any mortgagee who is participating, or may participate, in a PACE program under California law, or other action that has the effect of chilling PACE programs in California;

3. That Defendants Freddie Mac and Fannie Mae and all persons who act in concert with them be permanently enjoined from engaging in unfair competition or in any practice that facilitates unfair competition as defined in California Business and Professions Code section

17200, including, but not limited to, the acts and practices alleged in this Complaint, under the authority of California Business and Professions Code section 17203;

4. That the Court issue a declaratory judgment that Defendant FHFA violated NEPA and the APA by acting arbitrarily, capriciously, in an abuse of discretion, not in accordance with law and/or without observance of proper procedures required by law by failing to prepare appropriate environmental review before issuing its July 6, 2010 Statement and that the Court set aside FHFA's July 6, 2010 Statement;

5. That the Court award the costs of suit incurred; and

6. That the Court award such other and further relief as it may deem proper.

Dated: July 14, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California

KEN ALEX
Senior Assistant Attorney General
JANILL L. RICHARDS
Supervising Deputy Attorney General
Attorneys for the People of the State of California, ex rel. Edmund G. Brown Jr.

EXHIBIT A

FannieMae LENDER LETTER

Lender Letter LL-2010-06 **May 5, 2010**

TO: All Fannie Mae Single-Family Sellers and Servicers

Property Assessed Clean Energy Loans

Fannie Mae has received a number of questions from seller-servicers regarding government-sponsored energy loans, sometimes referred to as Property Assessed Clean Energy (PACE) loans. PACE loans generally have automatic first lien priority over previously recorded mortgages. The terms of the Fannie Mae/Freddie Mac Uniform Security Instruments prohibit loans that have senior lien status to a mortgage. As PACE programs progress through the experimental phase and beyond, Fannie Mae will issue additional guidance to lenders as may be needed from time to time.

Fannie Mae supports energy-efficiency initiatives, and is willing to engage with federal and state agencies as they consider sustainable programs to facilitate lending for energy-efficiency home retrofits, while preserving the status of mortgage loans originated as first liens.

Questions should be directed to Resource Center@fanniemae.com with the subject line "PACE." Lenders may also wish to consult with their federal regulators, who share concerns about PACE programs.

*****

Marianne E. Sullivan
Senior Vice President
Single-Family Chief Risk Officer

Freddie Mac
We make home possible®

Industry Letter

TO: Freddie Mac Seller/Servicers May 5, 2010

SUBJECT: First Lien Mortgages and Energy Efficient Loans

Several states have recently enacted laws that authorize localities to create new energy efficient loan programs that generally rely on the placement of a first priority lien to secure energy efficient home improvements. Programs under these laws are sometimes referred to as Energy Loan Tax Assessment Programs or Property Assessed Clean Energy programs. Freddie Mac has begun to receive questions about these new energy loan programs.

The purpose of this Industry Letter is to remind Seller/Servicers that an energy-related lien may not be senior to any Mortgage delivered to Freddie Mac. Seller/Servicers should determine whether a state or locality in which they originate mortgages has an energy loan program, and whether a first priority lien is permitted. Freddie Mac will provide additional guidance in the event that these energy loan programs move beyond the experimental stage.

Freddie Mac supports the goal of encouraging responsible financing of energy efficient and renewable energy home improvements. We continue to work with federal and state agencies and with Seller/Servicers on initiatives for developing workable energy retrofit programs.

CONCLUSION

Please contact your Freddie Mac representative or call (800) FREDDIE if you have any questions. Seller/Servicers may also wish to contact their federal regulators, who share concerns about energy liens.

Sincerely,

Patricia J. McClung

Patricia J. McClung
Vice President
Offerings Management

EXHIBIT B

Federal Housing Finance Agency
1700 G Street, N.W., Washington, D.C. 20552-0003
Telephone: (202) 414-3800
Facsimile: (202) 414-3823
www.fhfa.gov

July 6, 2010

Honorable Edmund G. Brown, Jr.
Attorney General
State of California
1515 Clay Street
20th Floor
Oakland, California 94612-0550

Dear Attorney General Brown:

Thank you for speaking with me this weekend. I was sorry to take time away from your holiday. I indicated that I will contact you again and see what specifics can be addressed per our discussion.

As you know, in earlier communications, you indicated concerns about the Property Assessed Clean Energy (PACE) programs and actions by Fannie Mae and Freddie Mac. The Federal Housing Finance Agency (FHFA) has reviewed the PACE programs again, considered safety and soundness issues that they present in their current form, carefully reviewed the status of current underwriting and energy standards, had further discussions with federal and state officials and undertaken to clarify the position of Fannie Mae and Freddie Mac on existing PACE program loans.

FHFA has determined that the first liens associated with PACE loans undertaken as tax assessments present a safety and soundness issue. Nevertheless, FHFA has directed the Enterprises to waive the clauses in their Uniform Security Instrument, prohibiting loans with a senior priority, for loans made prior to today's date, thereby addressing the concerns of existing homeowners with such first lien PACE loans.

Because of safety and soundness concerns, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake certain actions that address PACE programs with first lien provisions. These are described in the attached FHFA Statement. In the meantime, FHFA believes a pause in PACE and PACE-like programs would be beneficial to permit a complete review of the relevant issues set forth in the attached Statement. FHFA intends to continue working with all parties toward a cooperative and well developed model for energy retrofit lending.

While these actions are taken as a prudential matter, FHFA supports energy retrofit lending programs. As we have for the past year, FHFA remains committed to working with federal and state government agencies and with the private sector to assess what programs could be deployed or what currently existing programs may be modified that would operate to protect consumers, to facilitate lending while avoiding risks to lenders, to provide clarity on energy efficiency and to make energy conservation a goal that is being actively pursued at the residential level.

If you have any questions, you may contact me at 202 414 3788.

With all best wishes, I am

Sincerely,

Alfred M. Pollard

Alfred M. Pollard
General Counsel

Attachment

cc: Clifford Rechtschaffen
Janill L. Richards

FEDERAL HOUSING FINANCE AGENCY

STATEMENT

For Immediate Release
July 6, 2010

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

FHFA Statement on Certain Energy Retrofit Loan Programs

After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks. Specifically, programs denominated as Property Assessed Clean Energy (PACE) seek to foster lending for retrofits of residential or commercial properties through a county or city's tax assessment regime. Under most of these programs, such loans acquire a priority lien over existing mortgages, though certain states have chosen not to adopt such priority positions for their loans.

First liens established by PACE loans are unlike routine tax assessments and pose unusual and difficult risk management challenges for lenders, servicers and mortgage securities investors. The size and duration of PACE loans exceed typical local tax programs and do not have the traditional community benefits associated with taxing initiatives.

FHFA urged state and local governments to reconsider these programs and continues to call for a pause in such programs so concerns can be addressed. First liens for such loans represent a key alteration of traditional mortgage lending practice. They present significant risk to lenders and secondary market entities, may alter valuations for mortgage-backed securities and are not essential for successful programs to spur energy conservation.

While the first lien position offered in most PACE programs minimizes credit risk for investors funding the programs, it alters traditional lending priorities. Underwriting for PACE programs results in collateral-based lending rather than lending based upon ability-to-pay, the absence of Truth-in-Lending Act and other consumer protections, and uncertainty as to whether the home improvements actually produce meaningful reductions in energy consumption.

Efforts are just underway to develop underwriting and consumer protection standards as well as energy retrofit standards that are critical for homeowners and lenders to understand the risks and rewards of any energy retrofit lending program. However, first liens that disrupt a fragile housing finance market and long-standing lending priorities, the absence of robust underwriting standards to protect homeowners and the lack of energy retrofit standards to assist homeowners, appraisers, inspectors and lenders determine the value of retrofit products combine to raise safety and soundness concerns.

On May 5, 2010, Fannie Mae and Freddie Mac alerted their seller-servicers to gain an understanding of whether there are existing or prospective PACE or PACE-like programs in jurisdictions where they do business, to be aware that programs with first liens run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument and that the Enterprises would provide additional guidance should the programs move beyond the experimental stage. Those lender letters remain in effect.

Today, FHFA is directing Fannie Mae, Freddie Mac and the Federal Home Loan Banks to undertake the following prudential actions:

1. For any homeowner who obtained a PACE or PACE-like loan with a priority first lien prior to this date, FHFA is directing Fannie Mae and Freddie Mac to waive their Uniform Security Instrument prohibitions against such senior liens.

2. In addressing PACE programs with first liens, Fannie Mae and Freddie Mac should undertake actions that protect their safe and sound operations. These include, but are not limited to:

   - Adjusting loan-to-value ratios to reflect the maximum permissible PACE loan amount available to borrowers in PACE jurisdictions;

   - Ensuring that loan covenants require approval/consent for any PACE loan;

   - Tightening borrower debt-to-income ratios to account for additional obligations associated with possible future PACE loans;

   - Ensuring that mortgages on properties in a jurisdiction offering PACE-like programs satisfy all applicable federal and state lending regulations and guidance.

   Fannie Mae and Freddie Mac should issue additional guidance as needed.

3. The Federal Home Loan Banks are directed to review their collateral policies in order to assure that pledged collateral is not adversely affected by energy retrofit programs that include first liens.

Nothing in this Statement affects the normal underwriting programs of the regulated entities or their dealings with PACE programs that do not have a senior lien priority. Further, nothing in these directions to the regulated entities affects in any way underwriting related to traditional tax programs, but is focused solely on senior lien PACE lending initiatives.

FHFA recognizes that PACE and PACE-like programs pose additional lending challenges, but also represent serious efforts to reduce energy consumption. FHFA remains committed to working with federal, state, and local government agencies to develop and implement energy retrofit lending programs with appropriate underwriting guidelines and consumer protection standards. FHFA will also continue to encourage the establishment of energy efficiency standards to support such programs.

###

The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than $5.9 trillion in funding for the U.S. mortgage markets and financial institutions.

EXHIBIT C

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

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May 17, 2010

Via Facsimile and U.S. Mail

Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, DC 20552-0003
FAX: (202) 414-3823

RE: Fannie Mae Lender Letter LL-2010-06 (May 5, 2010) and Freddie Mac Industry Letter (May 5, 2010) re Property Assessed Clean Energy (PACE) Programs

Dear Acting Director DeMarco:

Property Assessed Clean Energy (PACE) programs authorize local governments to finance energy efficiency and renewable energy improvements to the benefit of homeowners and small businesses. In California, PACE financing is not accomplished through loans in the traditional sense, but rather through local governments' long-standing and well-recognized powers to assess and tax. PACE programs in California can assist thousands of individual participants statewide, help to drive the State's green economy, and create thousands of jobs.

On May 5, 2010, Fannie Mae and Freddie Mac issued short, somewhat cryptic lender and industry advice letters concerning PACE programs. While the advice letters do not expressly mention California PACE programs, they have nonetheless caused confusion and concern among California PACE stakeholders. By this letter, we request that the Federal Housing Finance Authority (FHFA) immediately confirm in writing that the advice letters do not affect PACE in California.

As you are likely aware, the California Attorney General's Office at the end of last year began a discussion with FHFA staff about PACE in California. During these discussions, your staff assured this Office that we would continue to work together on issues related to PACE. Relying in part on this assurance, California has invested substantial resources in PACE programs, consistent with the White House's "Recovery Through Retrofit" policy document and with the express support of the Department of Energy. A substantial portion of the approximately $300 million in Energy Efficiency and Block Grant funding, and a substantial portion of the over $220 million in additional American Recovery and Reinvestment Act funds administered by the California Energy Commission through its State Energy Program, have been dedicated to PACE programs. Moreover, California recently passed legislation creating a $50 million state reserve fund that will allow participating local governments to obtain financing for PACE on more favorable terms.

The disruption caused by Fannie Mae's and Freddie Mac's recent actions may have serious financial implications for participating local governments and the homeowners and small businesses participating in these programs in California. To take just one example, Sonoma County, through its PACE program, already has financed over 800 energy improvement projects. But the repercussions will be wider still. PACE programs in California create reliable markets for new technologies in energy efficiency, renewable energy, and water efficiency. They thus support green manufacturing jobs and thousands of additional jobs associated with installation and maintenance of energy efficiency and renewable energy projects. Now is not the time to create unnecessary uncertainty in these important emerging businesses and industries.

Based on our recent conversation with your General Counsel, Alfred Pollard, we understand that the May 5, 2010, letters were not intended in any way to signal a change in the position of FHFA, Fannie Mae or Freddie Mac regarding PACE in California. Accordingly, we request that FHFA immediately confirm in writing that participants in California PACE programs are <u>not</u> in violation of Fannie Mae/Freddie Mac Uniform Security Instruments prohibiting loans that have a senior lien status to a mortgage. We are open to discussing with you what form that confirmation should take, including, but not limited to, withdrawal of the May 5, 2010, letters.

We would prefer not to have to pursue some form of declaratory relief to resolve the confusion, but, because of the importance of the issue to California, we certainly reserve that as an option if a clear and unequivocal response is not forthcoming.

– continued –

Once this immediately pressing matter is resolved, we look forward to discussing with you what longer-term solutions may be warranted to foster the continued responsible development of PACE programs in California.

Sincerely,

/s

CLIFFORD RECHTSCHAFFEN
Special Assistant Attorney General

/s

JANILL L. RICHARDS
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

cc: Joseph R. Biden Jr., Vice President
Dianne Feinstein, U.S. Senator
Barbara Boxer, U.S. Senator
Steven Chu, Secretary, U.S. Department of Energy
Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development
Timothy Geithner, Secretary, U.S. Department of the Treasury
Carol Browner, Director, White House Office of Energy and Climate Change
Nancy Sutley, Chair, Council on Environmental Quality
Michael J. Williams, President and Chief Executive Officer, Fannie Mae
Charles E. Haldeman, Jr., Chief Executive Officer, Freddie Mac
Arnold Schwarzenegger, Governor, State of California
Bill Lockyer, State Treasurer and Chair, CAEATFA
Karen Douglas, Chair, California Energy Commission

EDMUND G. BROWN JR.
Attorney General

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May 19, 2010

Via Facsimile and U.S. Mail

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, N.W.
Washington, DC 20552-0003
FAX: (202) 414-3823

RE: Federal Housing Finance Authority (FHFA) Letter of May 18, 2010
Property Assessed Clean Energy (PACE) Programs

Dear Mr. Pollard:

Thank you for your letter confirming receipt of the California Attorney General's letter dated May 17, 2010. We appreciate your promise to respond to our specific request for confirmation that the Fannie Mae and Freddie Mac advice letters of May 5, 2010, were not intended to affect California PACE programs. We are, however, concerned that FHFA did not commit to providing that response within a specific timeframe. As we stated in our previous correspondence, the advice letters are causing unacceptable disruption to PACE in California, to the detriment of participating homeowners and small businesses and the many green industries that support the program.

To expedite this process, we request a telephone meeting with you and Acting Director DeMarco, preferably before the end of this week.

Sincerely,

JANILL L. RICHARDS
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

EDMUND G. BROWN JR.
Attorney General

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June 22, 2010

Edward DeMarco, Acting Director
Federal Housing Finance Agency
1700 G. Street, N.W.
Washington, D.C. 20552-0003 FAX: (202) 414 3823

RE: Energy Efficiency and Renewable Energy Assessments (PACE) and Lien Priority

Dear Acting Director DeMarco:

On May 17, 2010, we sent you a letter expressing concern about lender and industry advice letters issued by Fannie Mae and Freddie Mac on May 5, 2010. These advice letters equated financing under Property Assessed Clean Energy (PACE) programs with "loans," and strongly suggested that such "loans," because they have lien priority, would preclude sale of mortgages to Fannie and Freddie. As we have repeatedly made clear to FHFA General Counsel, Alfred Pollard, under California law, PACE financing is achieved through special assessments, not loans. The distinction is key. Like other special assessments, such as those used by California's local governments since the beginning of the last century to finance road paving and sidewalk improvements, unpaid PACE assessments take priority over mortgages. Fannie Mae's and Freddie Mac's own standardized documents recognize the priority of assessment liens.

While the advice letters are ambiguous, the effect they have had in this state is not. The letters have had a devastating impact on PACE programs in California, placing at risk hundreds of millions of dollars of federal stimulus funding, hundreds of millions of dollars of state, local and private funding, and impacting California's efforts to promote green jobs and greenhouse gas emission reductions. Despite requests from the California Attorney General, the Governor, the Vice President, Members of Congress, the Department of Energy, the private lending community, and the Council on Environmental Quality, your agency has taken no action to resolve the situation or even identify a process by which the matter will be resolved.

The FHFA has raised a potentially serious issue – that PACE programs may increase the risk of default by increasing homeowner debt. As the attached hypothetical establishes, however, the practical effect on Fannie Mae's and Freddie Mac's portfolios is minimal, given the relatively small liens that may result from missed PACE assessments and the default rate that reasonably can be expected in PACE communities. Nonetheless, California and the local governments that are attempting to move forward with PACE programs are prepared – immediately – to discuss with you how those risks have already been addressed and minimized through detailed program requirements and "best practices." Depending on what further concerns the FHFA may have, we commit to working with you to identify and implement further actions as needed. We cannot, however, afford your agency's continued silence. The time to act on this matter is at hand.

There is a great deal at stake here for California and for the nation's economy. We take seriously the FHFA's concerns about mortgage security and are prepared to address those concerns. We ask you to take seriously the need to move forward immediately with California's PACE programs, with energy efficiency and renewable energy retrofit efforts, with federal stimulus funding, and with California's determined efforts to create jobs and economic momentum.

We would like to set up a meeting as soon as possible in order to resolve this matter. We believe that the meeting would benefit from the participation of the Vice President's Office, the Governor's Office, and other officials who have been working extensively on this matter. Please contact me at your earliest convenience by the end of this month so that we can move forward in the most constructive manner possible.

Thank you for your immediate attention.

Sincerely,

Ken Alex

KEN ALEX
Senior Assistant Attorney General

For EDMUND G. BROWN JR.
Attorney General

Attachments

cc: Joseph R. Biden Jr., Vice President
Dianne Feinstein, U.S. Senator
Barbara Boxer, U.S. Senator
Steven Chu, Secretary, U.S. Department of Energy
Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development
Timothy Geithner, Secretary, U.S. Department of the Treasury
Carol Browner, Director, White House Office of Energy and Climate Change
Nancy Sutley, Chair, Council on Environmental Quality
Michael J. Williams, President and Chief Executive Officer, Fannie Mae
Charles E. Haldeman, Jr., Chief Executive Officer, Freddie Mac
Arnold Schwarzenegger, Governor, State of California
Bill Lockyer, State Treasurer and Chair, CAEATFA
Karen Douglas, Chair, California Energy Commission

Hypothetical Exploring Risk Associated with PACE Liens
Averaged Over a Portfolio of Mortgages

The impact of the PACE financing on the risk borne by mortgage lenders is minimal. The following mortgage foreclosure scenario shows why:

> A homeowner of a house valued at $300,000 with a $250,000 mortgage seeks $15,000 in PACE financing, reflecting the costs of a renewable energy system and energy efficiency upgrades, less all available rebates and incentives. (Some large solar projects may cost more; efficiency-only upgrades will be substantially less.)
>
> With a 7% interest rate (which is on the high side) and a 20-year payback period, the estimated annual PACE assessment would be $1,470.[1]
>
> The homeowner stops paying the mortgage and property taxes, including assessments. Delinquency on the mortgage occurs when the home owner is less than three monthly payments behind in the mortgage, and default when the homeowner is three or more monthly payments behind; default triggers foreclosure.[2]
>
> At the time of foreclosure for failing to pay the mortgage, it is likely that at most, one PACE assessment of ~$1,500 would have achieved priority lien status. (This is because under California law, there is no acceleration of the entire amount financed for failure to pay an assessment, including a PACE assessment; rather, the new owner assumes the continuing obligation to pay the assessments as they become due.)

If we run the same hypothetical with PACE financing of $20,000, the PACE lien consisting of one missed annual assessment would be $1,960.

This exercise suggests that with a "portfolio" of Fannie/Freddie mortgages that have PACE liens, assuming a high foreclosure rate of 10%, PACE seniority would average $150 per home (10% x $1,500). Using a more reasonable foreclosure rate of 5%, average PACE seniority per home would be a mere $75.

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[1] Results obtained by using Sonoma County's annual payment calculator, available at http://sonomacountyenergy.org/lower.php?url=calculator.

[2] See California Urban Strategies Council, *California Foreclosure Timeline*, available at http://www.urbanstrategies.org/foreclosure/Timeline/ForeclosureProcessTimelineandInterventions_7_11_07.pdf.

ATTACHMENT I

Office of the Governor ARNOLD SCHWARZENEGGER THE PEOPLE'S GOVERNOR

PRESS RELEASE

07/14/2010 GAAS:435:10 FOR IMMEDIATE RELEASE

Governor Schwarzenegger Issues Statement of Support for Attorney General's Lawsuit

Governor Arnold Schwarzenegger today issued the following statement in support of the Attorney General's decision to file a lawsuit to overturn the recent decisions by Fannie Mae, Freddie Mac and the Federal Housing Finance Agency that effectively prevent the continuation of residential Property Assessed Clean Energy Financing (PACE) programs.

"I strongly support the Attorney General's decision to file suit to allow PACE programs to continue in California. By making it more affordable for Californians to invest in energy efficiency, PACE programs offer great benefits to California. Achieving energy independence has always been a top priority in my Administration, and it would be preposterous to do away with a program that will create jobs, provide energy savings and benefit our environment. That is why I urge a quick resolution to this lawsuit to allow the continuation of PACE programs in California."

Governor Schwarzenegger created the California Recovery Task Force to track the American Recovery and Reinvestment Act funding coming into the state; work with President Barack Obama's administration; help cities, counties, non-profits, and others access the available funding; ensure that the funding funneled through the state is spent efficiently and effectively; and maintain a Web site (www.recovery.ca.gov) that is frequently and thoroughly updated for Californians to be able to track the stimulus dollars.

ATTACHMENT J

July 13, 2010

Dear Members of the California Congressional Delegation:

California needs your help immediately. The Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac struck a body blow this month to California's landmark efforts to lead the nation in weatherizing homes and placing solar panels on buildings, bringing to a halt more than $450 million in retrofit projects. Absent immediate federal action, California's launch of the largest retrofit program in the country cannot happen.

On July 6, FHFA issued a statement that effectively halts the promising PACE (Property Assessed Clean Energy) financing programs in California and in communities across the country. First pioneered in California just two years ago, PACE is an innovative local government tool that eliminates the upfront cost associated with energy efficiency, renewables, and water conservation retrofits.

California has allocated $50 million in American Recovery and Reinvestment Act (ARRA) stimulus funding to PACE financing programs. As a result, more than 200 California communities have either launched or are preparing to launch PACE programs, and together they will leverage more than $400 million that is now in limbo due to FHFA's statement. PACE programs enable homeowners to dramatically reduce their utility bills, while creating thousands of local construction and other jobs. And they have enormous potential to help California achieve critical reductions in energy use and greenhouse gas emissions.

California has adopted a Long Term Strategic Plan for Energy Efficiency and a key component is the comprehensive retrofit of buildings throughout the state, to provide us with a clean energy economy. The Commission has reshaped energy efficiency and low income programs to align with PACE programs, so that utility ratepayer dollars can be combined with ARRA funding and PACE financing to achieve maximum energy and dollars savings. Thus, the halt of PACE financing jeopardizes not only ARRA funded programs but also this Commission's authorized $3.8 billion energy efficiency programs set for 2010-2012.

If this is not addressed immediately by expedited Congressional legislation or other appropriate action, then the efforts that California has made, working in harmony with our federal counterparts, to launch this popular job creation/energy saving program across California will come to naught.

We request your leadership in addressing the critical issue to California at the earliest opportunity.

Respectfully,

Michael R. Peevey
President

Dian M. Grueneich
Assigned Commissioner, Energy Efficiency and Low Income Energy Programs

cc: The Honorable Timothy Geithner, Secretary, U.S. Department of the Treasury
The Honorable Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development
The Honorable Stephen Chu, Secretary, U.S. Department of Energy
Mr. Edward DeMarco, Acting Director, Federal Housing Finance Agency
The Honorable Arnold Schwarzenegger, Governor, State of California
The Honorable Nancy Sutley, Chair, Council on Environmental Quality
Ms. Carol Browner, Director, White House Office of Energy and Climate Change
The Honorable Bill Lockyer, State Treasurer and Chair, CAEATFA
Mr. Charles E. Haldeman, Jr., Chief Executive Officer, Freddie Mac
Mr. Michael J. Williams, President and Chief Executive Officer, Fannie Mae
Ms. Karen Douglas, Chair, California Energy Commission

ATTACHMENT K

CALIFORNIA ENERGY COMMISSION
KAREN DOUGLAS, CHAIRMAN
1516 NINTH STREET, MS 33
SACRAMENTO, CA 95814-5512
(916) 654-5036
FAX (916) 653-9040

July 16, 2010

Dear Congressional Delegation:

California is a pioneer of innovative ways to protect the environment while sustaining a vibrant economy. Using American Recovery and Reinvestment Act (ARRA) funds, we are continuing to create clean energy jobs and industries through residential and commercial energy efficiency retrofits and renewable energy programs.

The action taken on July 6, 2010, by the Federal Housing Finance Agency (FHFA), Fannie Mae and Freddie Mac to stop Property Assessed Clean Energy (PACE) financing, severely damaged the state's ability to move forward on one of the most cost effective and innovative ways to support and finance energy measures for residential customers. PACE financing helps homeowners invest in energy efficiency retrofits while revitalizing the struggling construction industry. Cost effective and easily accessible financing is a critical element of our State's energy policy goals.

The California Energy Commission (Energy Commission), based on the direction of the Vice President's Office and Department of Energy, has spent the past 10 months developing statewide PACE programs. We are prepared to roll-out PACE programs in 26 of our 58 counties, every major municipality in the State will be developing a program and by the end of the third quarter of the year 28 million Californian's could have access to this low-cost financing opportunity.

PACE programs are already providing benefits to California communities. California's existing pilot PACE programs are saving energy and money across California and Sonoma County has experienced an 8.4 percent increase in construction sector employment since the creation of its *Energy Independence* PACE program in March 2009.

However, it is not only the Energy Commission that has invested more than $30 million of the State's ARRA funds in this financing program. California cities and counties have geared up to invest their own Energy Efficiency Conservation Block Grant funds into new local PACE programs. Moreover, the halt of PACE financing significantly harms not only ARRA funded programs but also the California Public Utilities Commission's authorized $3.8 billion energy efficiency programs over the next two years.

To have FHFA undermine this program and momentum at this late date is deeply troubling and reflects both a fundamental misunderstanding of the nature of these lawful assessments and a breakdown in national policy. Additionally and perhaps more alarming, is that FHFA's actions are deeply destructive to the nation's collective efforts to combat global warming, invigorate the economy with clean-tech jobs, reduce consumers' energy bills, and reduce our dependency on fossil fuels.

California Attorney General Jerry Brown's July 14, 2010, lawsuit rightly challenges the FHFA's faulty logic in discriminating against PACE assessments and violating the constitutional rights of local governments. PACE assessments are not loans, but instead are built on traditional tax assessments, which have been managed by local governments for over 100 years. Following Department of Energy guidance, PACE in California is being implemented with stringent operating rules, and with conservative and rigorous financial criteria, to reduce risk to homeowners, lenders or the financial system. This lawsuit aims to protect California building owners' ability to reduce their energy bills and communities right to implement safe, innovative strategies for creating jobs, saving energy and building a green economy.

Your assistance and leadership is required to ensure that federal energy policy is not undermined and that the State can continue to move forward efficiently with ARRA funding to create jobs, increased renewable energy generation, reduce energy use and green house gas emissions.

We respectfully request that you act with all due haste so that we can ensure implementation of these broad-reaching programs reach their potential.

Sincerely,

KAREN DOUGLAS
Chairman

cc: Members of the California Congressional Delegation
Arnold Schwarzenegger, Governor, State of California
Mr. Edward DeMarco, Acting Director, Federal Housing Finance Agency
Dr. Stephen Chu, Secretary, U.S. Department of Energy
Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development
Timothy Geithner, Secretary, U.S. Department of the Treasury
Carol Browner, Director, White House Office of Energy and Climate Change
Nancy Sutley, Chair, Council on Environmental Quality
Michael J. Williams, President and Chief Executive Officer, Fannie Mae
Charles E. Haldeman, Jr., Chief Executive Officer, Freddie Mac
Bill Lockyer, State Treasurer and Chair, CAEATFA
California Public Utilities Commission

ATTACHMENT L

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Assembly
California Legislature

JARED HUFFMAN
ASSEMBLYMEMBER, SIXTH DISTRICT

COMMITTEES
CHAIR, WATER, PARKS AND WILDLIFE
BUDGET
NATURAL RESOURCES
UTILITIES AND COMMERCE

BUDGET SUBCOMMITTEE NO.3 ON RESOURCES

July 14, 2010

Dear Members of the California Congressional Delegation:

The undersigned members of the Legislative Environmental Caucus are writing to urge you to take immediate action to save a very promising and innovative new program to finance energy and water use efficiency improvements – a program that is suddenly in jeopardy due to a recent policy position taken by the Federal Housing Finance Agency (FHFA). Property Assessed Clean Energy (PACE) programs were pioneered in California just two years ago, with strong bipartisan support in the Legislature.

PACE is an innovative tool that allows homes and businesses to eliminate the upfront cost associated with investing in energy efficiency, renewable energy generation, and water conservation retrofits. It allows property owners to voluntarily enter into assessment agreements with local government to finance these improvements through property tax assessments. In addition to the tax advantages of such financing, PACE allows homeowners to achieve energy and water savings that help pay back the costs of installation. Just as important, PACE programs have created thousands of much-needed jobs in the areas that are implementing PACE, and substantial job creation was being projected as more than 200 California communities – including the cities of San Francisco and Los Angeles – have either launched or are preparing to launch PACE programs. California has allocated $50 million in American Recovery and Reinvestment Act (ARRA) stimulus funding to PACE financing programs and has committed another $50 million for loan loss reserve coverage to bring down financing costs of these loans. This in turn will leverage hundreds of millions of dollars in local investments.

Last week, many PACE programs were halted and the future of PACE was put at risk when FHFA adopted a new policy position that treats PACE financing - unlike all other property assessments - as a loan that undermines the priority of mortgages. Under FHFA's new position, Fannie Mae and Freddie Mac are prohibited from financing or re-financing any home or business that has a PACE assessment. This new policy position places a serious cloud over the many California homes and businesses that have already encumbered their properties with PACE assessments and dramatically reduces, if not eliminates, the pool of homeowners and businesses that would consider participating in PACE programs going forward.

Despite strong support for PACE from a bipartisan majority of the California Legislature and from the Obama administration, FHFA's recent actions essentially halt one of California's best tools for weatherizing buildings, installing solar panels, retrofitting homes and businesses for major water savings – and creating jobs. Up to a billion dollars in retrofit projects are at stake. Absent immediate legislative action by Congress or other appropriate federal relief, California's launch of the largest retrofit program in the country cannot move forward, and the efforts California has made working in harmony with our counterparts at the federal and local levels to launch this popular job creation/energy saving program will not move forward.

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Whether viewed from the perspective of job creation and economic recovery, or as a powerful tool for achieving environmental benefits, PACE is too important to California and the rest of the nation to be put in limbo by an agency's wrong-headed policy position. We request your leadership in expeditiously resolving this issue so that we can get PACE programs back on track and put thousands of Californians back to work.

Jared Huffman
Assemblymember, 6th District

Gil Cedillo
Senator, 22nd District

Loni Hancock
Senator, 9th District

Anthony Portantino
Assemblymember, 44th District

Lori Saldaña
Assemblymember, 76th District

Paul Fong
Assemblymember, 22nd District

Jerry Hill
Assemblymember, 19th District

Fran Pavley
Senator, 23rd District

Kevin De León
Assemblymember, 45th District

Nancy Skinner
Assemblymember, 14th District

Bob Blumenfield
Assemblymember, 40th District

Noreen Evans
Assemblymember, 7th District

Dave Jones
Assemblymember, 9th District

Tom Ammiano
Assemblymember, 13th District.

Ted Lieu
Assemblymember, 53rd District

Mark Leno
Senator, 3rd District

Wilmer Amina Carter
Assemblymember, 62nd District

Tom Torlakson
Assemblymember, 11th District

Joe Simitian
Senator, 11th District

Christine Kehoe
Senator, 39th District

Denise Moreno Ducheny
Senator, 40th District

Wesley Chesbro
Assemblymember, 1st District

Bill Monning
Assemblymember, 27th District

Alex Padilla
Senator, 20th District

Mark DeSaulnier
Senator, 7th District

John A. Pérez, Speaker of the Assembly
Assemblymember, 46th District

ATTACHMENT M

July 15, 2010

Karen Douglas
Chair
California Energy Commission
1516 Ninth Street, MS-33
Sacramento, CA 95814

Dear Chair Douglas,

In March of 2009, 37 days after President Obama signed the American Recovery and Reinvestment Act ("Recovery Act") into law, Governor Schwarzenegger signed Executive Order S-02-09, which created the California Recovery Task Force and affirmed the Governor's commitment to ensuring that Recovery Act funds are deployed expeditiously and in a manner consistent with the pressing economic needs of Californians. To be exact, the Governor declared, "It is in California's best interest to ensure that the Recovery Act is implemented quickly and efficiently and that its funds are deployed on the most meritorious projects to ensure the greatest stimulus effect."

As part of the Recovery Act, the California Energy Commission received $226 million for its State Energy Program. Of this money, your Commission designated $30 million to the Municipal Financing Program, which directed the implementation of local financing programs that would carry out energy retrofits in existing residential, commercial, and industrial buildings. The central mechanism that would allow these programs to operate was Property Assessed Clean Energy (PACE) financing.

On October 8, 2009, your Commission issued Solicitation Number 400-09-401 and is now in the process of contracting with several entities as part of the Municipal Financing Program. However, due to the recent decisions by Fannie Mae, Freddie Mac, and the Federal Housing Financing Agency that would prevent the continuation of PACE programs, it is evident that the efforts of the CEC to use the PACE financing model no longer constitute a viable option.

I am calling on the CEC to adapt to the changed regulatory landscape in a way that will allow full obligation of the reallocated funds by September 30, 2010. If the CEC does not respond to the challenges recently imposed by aforementioned federal entities, the CEC is teetering on failing to honor both Governor Schwarzenegger's Executive Order and the federal mandate to put Recovery Act funds to work for the American people as quickly and efficiently as possible. Every day that passes without action by the CEC increases the chance that stimulus funds so vital to California's recovery could be rescinded. The Governor has indicated in the past that any rescission of Recovery Act funds is unacceptable. Therefore, it is incumbent upon the CEC to immediately find ways to encumber State Energy Program funds in a manner that prioritizes expediency and viability.

In the days ahead, we must be ever mindful of the purpose of Recovery Act money—to spur economic growth—and the urgency that accompanies its receipt. I look forward to seeing State Energy Program funding go to work for the California economy. We will continue to support you in your endeavors and please do not hesitate to contact me with any concerns.

Sincerely,

Richard Rice

Richard Rice
Director
California Recovery Task Force